



P.O. Box 77457 T 336-547-9338
Greensboro, NC 27417 w anuainternational.com

STANDARD TERMS AND CONDITIONS OF SALE

- 1. AGREEMENT:** The attached documents and these Terms and Conditions shall constitute the complete Agreement between Anua International LLC, a New York limited liability company (hereinafter referred to as "Supplier") and Buyer for all products and services to be provided to Buyer. No other terms and conditions and no modification or amendment thereof shall be binding unless consented to in writing by both parties. Buyer may use its purchase order form to place orders for products and services, but only so long as Buyer understands and agrees that these Terms and Conditions govern. Any terms and conditions of Buyer which are in addition to, or inconsistent with the terms and conditions of this Agreement shall be deemed stricken from such order.
- 2. CHANGES:** Written notice of any changes proposed by Buyer to the mix or quantity of products ordered or services to be performed by Supplier shall be given to Supplier and must be accepted by Supplier in writing before Supplier proceeds with such changes. If such changes alter the amount due under this Agreement, adjustment of the price shall be mutually agreed to in writing.
- 3. DELIVERY:** Supplier will use its commercially reasonable efforts in the ordinary course of business to meet delivery date(s) as specified but in no event shall Supplier be liable for any damage, consequential or otherwise, arising from any failure of Supplier to meet any delivery date.
- 4. SHIPMENT:** Buyer shall bear all costs of shipment by direct, advance payment to the carrier. Buyer shall have the right to state the exact method of shipment preferred. In absence of shipping directions or if Buyer so requests, Supplier will use its best judgment in selecting shipper, packing, loading, and routing the shipment. Supplier shall be entitled to make partial shipments of products covered by this Agreement as such products become available for shipment and may invoice Buyer separately for each such partial shipment. Partial shipment of products shall not relieve Buyer from its obligation hereunder to accept shipments of the remainder of the order. Shipment of products arranged by Supplier will be subject to an additional handling fee in an amount equal to fifteen percent (15.0%) of the freight cost.
- 5. RISK OF LOSS:** Title and risk of loss with respect to the products furnished under this Agreement shall pass to Buyer at the time of delivery of the products to the carrier for shipment. Ex Works (EXW) point shall be Supplier's warehouse unless otherwise specified and identification of the goods at such EXW shall constitute delivery.
- 6. PAYMENT:** Supplier shall invoice Buyer for the purchase price of each of the products shipped and services rendered pursuant to this Agreement. Buyer shall pay all amounts specified in any such invoice to Supplier within thirty (30) days, unless otherwise specified, from the date of invoice. Supplier may require advanced payment. Any amounts due hereunder from Buyer and not paid within thirty (30) days from the due date thereon shall bear interest at the lesser of the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law. Such interest shall be in addition to any without limitation of any other rights or remedies, which Supplier may have under this Agreement or at law or in equity.
- 7. TAXES, LICENSES, TESTING FEES PERMITS, DUTIES, ETC:** Buyer shall be responsible for all taxes, licenses, testing fees, permits, or duties, arising out of or related to the provision of products and services under this Agreement, including but not limited to sales, use and excise taxes. All taxes shall be in addition to the sales price unless otherwise stated.
- 8. RETURNS:** Products shipped may not be returned for credit, but Supplier may agree, at its sole discretion, to repurchase such materials at a negotiated price.
- 9. ACCEPTANCE BY BUYER:** The products shall be deemed accepted by Buyer as of their date of receipt unless within five (5) days after such date Buyer gives Supplier written notice that the products do not conform to the specifications of the Supplier quote (as may be mutually amended in writing by change order) and specifies in detail the reasons therefore; provided, however, that any shortages, loss or damages in transit must be noted on the Bill of Lading and written notice and a copy of the Bill of Lading as notated must be provided to the carrier at the time of delivery and to the Supplier not later than three (3) days following delivery. In which may then, at its sole election, undertake to make such corrections as it determines are required, if any, to conform the products to spec, in which case such corrective action by Supplier shall be Buyer's sole remedy for non-acceptance of product. Upon completion and acceptance of such corrections, the products will be deemed accepted by Buyer. No testing, other acceptance procedure(s), or performance standards are included in or covered by the Supplier quote, unless expressly so stated, and for which Buyer has paid in full in advance.
- 10. FORCE MAJEURE:** Delay in or failure to carry out the duties imposed upon either party (except Buyer's duty to make payment to Supplier) under this agreement shall not constitute default hereunder or give rise to any claim for damages if such delay or failure results directly or indirectly from acts of God, acts of any civil or military authority, civil disturbances, war, strikes or other labor disputes, shortages of labor or materials, fire, transportation contingencies, pandemic, laws, regulations, acts or orders of any government or agency or official thereof, other catastrophes or any other similar occurrences beyond such party's reasonable control, all of the aforesaid being herein for convenience referred to as "events of force majeure". Force majeure delays shall also extend the estimated delivery date on a day-by-day basis.
- 11. PATENT, TRADEMARK AND COPYRIGHT INDEMNIFICATION:** Buyer shall at its own expense defend any claim, suit or



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proceeding brought against Supplier insofar as such claim, suit or proceeding is based upon a claim of infringement of any United States or Foreign Patent, Trademark or Copyright regarding (i) any system or product into which the Supplier products are integrated, or (ii) the products provided by Supplier under this Agreement manufactured by Supplier to meet particular design or function specifications provided by Buyer to Supplier under this contract or quote. Supplier shall notify Buyer in writing of any such suit or proceeding promptly upon Supplier's learning of such suit or proceeding, and shall provide Buyer, at no cost, with such reasonable assistance and cooperation as in Supplier's sole judgment Buyer may reasonably need in the defense thereof. Additional assistance that does not impact Supplier's ability to do business will be provided at Supplier's standard rates and must be prepaid by Buyer. Buyer shall have sole control over any such suit or proceeding, provided that Supplier may participate in such defense at its own cost.

12. CONSEQUENTIAL DAMAGES: Notwithstanding anything in this Agreement to the contrary, Supplier shall have no liability whether arising in contract, tort, or otherwise, for loss of capital, loss of product, lowered production, loss of profit, loss of use, or any indirect, special, incidental or consequential damages.

13. LIMITED WARRANTIES: A) This warranty is a LIMITED WARRANTY, and no claim of any nature shall be made against Anua unless and until the original retail customer, or his legal representative, notifies Anua in writing of the defect complained of and delivers the product and /or defective part(s), freight prepaid, to Anua or an authorized service station.

B) Anua warrants to Buyer (unless earlier terminated or suspended in accordance with subsections C through G, below) all products will be warranted to be free from defects in materials and workmanship for a period equal to the lesser of (a) twelve (12) months from initial installation, or (b) eighteen (18) months date of delivery, unless otherwise stated in a product specific maintenance manual or owner's manual, Ex Works (EXW) Supplier's warehouse.

C) In the event that Supplier received written notice of a breach of the above warranty within the warranty period and within ten (10) days after the discovery of such breach, then Supplier shall, at its sole option, either replace such products that are determined by Supplier to be defective in materials and/or workmanship or refund that portion of the original purchase price of the products calculated by dividing the remaining warranty term by the term of the initial warranty. Products replaced or repaired during the warranty period shall not carry a new warranty, but instead shall carry the unexpired portion of the original product warranty. Buyer must obtain Supplier's written authorization prior to returning products to Supplier. All products returned to Supplier for replacement must be sent by Buyer freight prepaid to Supplier's warehouse and will be returned to Buyer freight prepaid. Supplier's obligations under this warranty are conditioned upon timely receipt of all payments in strict accordance with payment terms, time being of the essence in this regard. During any period in which any payment due Supplier from Buyer is late, Supplier shall have no warranty obligation to Buyer.

D) In the event that any product returned by Buyer to Supplier for warranty reasons is determined by Supplier not to be defective, Buyer shall reimburse Supplier for all related shipping, inspection, testing, analysis, evaluation, return or restocking costs incurred by Supplier pursuant to Section B above, and shall pay to Supplier an amount equal to Supplier's standard service charge in effect at that time applicable to erroneous warranty claims.

E) The warranty set forth in Section A hereof does not apply to any product altered by Buyer or any third party, or to any effects of Buyer's installation, operation, maintenance, or use of such products that does not conform to Supplier's published technical design parameters and specifications, nor does it cover failure of material due to damage in shipment or damage or failure resulting in whole or in part from improper or not previously disclosed use or negligence of Buyer or any third party, or conditions of use more severe than normal or different from uses set forth in Buyer's disclosure to Supplier prior to Supplier quote.

F) Supplier's refund or replacement obligation under Section B above shall be Buyer's sole and exclusive remedy for a breach of the warranty set forth in Section A above. Such warranty is the sole warranty made by Supplier with respect to any product or service purchased by or provided to Buyer pursuant to this Agreement and is in lieu of all other warranties by Supplier expressed or implied, including, without limitation, the implied warranties of merchantability and fitness for a particular purpose.

G) The limited warranties of Supplier apply only to products for which Supplier has been paid in full. The limited warranties of Supplier do not extend to, and Supplier does not guarantee: a) the installation of any Supplier products, b) Buyer or third party designed, managed, maintained, controlled or staffed operation of equipment incorporating any Supplier products, or c) any services. Buyer warrants and represents that it has independently determined the suitability of Supplier products provided under this and related contracts for the uses, processes, and products to or for which Buyer manufactures or operates and intends to manufacture or operate that incorporate Supplier products. Supplier has relied on information provided by Buyer to prepare sales proposal(s) and technical specifications in the Supplier Quote, and for Supplier to determine the physical properties, capacity ratings, and projected performance relating to any equipment that may incorporate the product as set forth in this Agreement. Buyer understands and agrees that Supplier's reliance on Buyer information is reasonable and warrants that the information presented to Supplier was reliable in all respects. Any post-Quote variance by Buyer in the process or its nature or conditions of operation from specific information provided by Buyer on which Supplier based its Quote terminates all warranties. Any terms or conditions in any Buyer order purporting to be a standard of performance or other operational parameter(s) as a condition that must be met before acceptance and/or payment in full for of Supplier's products ordered or services performed, are not included in or covered by the Supplier Quote or the warranties. Any performance criteria must be clearly and completely set forth in a Separate written agreement entitled Performance Agreement, which has separate and distinct terms and warranties, is priced separately and must be signed by



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an authorized representative of the Buyer and Seller company to become binding.

H) In addition to the conditions outlined in the maintenance manual or owner's manual the warranty will void if any of the following occur: a) failure of the customer to produce written evidence of the system having been desludged as required, b) Improper operation or service of any system component, c) Failure to use best kitchen practices and properly control excessive amounts of oil and grease, sugars, flour, alcohols, or yeast entering the system, d) Brewing or growing activities which fail to properly control fermented by-products, yeast, enzymes, bacterial additives, or colloidal substances from entering the system, e) Failure to properly control quaternary ammonium compounds (QAC) to less than 2 mg/l from entering the system, f) Introduction of toxic or harmful substances not typically present in the potable water supply or derived from excreted human bodily wastes or graywater. Examples of toxic or harmful substances include, but are not limited to, industrial cleaning products; herbicides; insecticides; sanitizers; disinfectants; bactericides; peroxides; pharmaceuticals which disrupt cellular cycle such as chemotherapy or other; drugs such as methamphetamines or other; enzymes; solvents; phenolics; petroleum-derived oils; transition group metals such as chromium, zinc, copper, silver, cadmium; or heavy metals such as lead or mercury; acids with pH below 6.0; or bases with pH above 9.0.
g) Hydraulic flow exceeds the design capacity of the system, h) Organic load exceeds the design capacity of the system, i) The pH of the system is not maintained between 6.0 and 9.0, j) Failure of the end user to use a service provider who is properly trained by Anua or an Anua authorized representative, k) Failure to follow the conditions and procedures outlined in the Maintenance Manual and Owner's Manual, l) System settings or operation of pumps, metering devices, effluent distribution components or other parts that can affect the integrity and proper operation of the system are changed by the end user without consultation with, and the concurrence of, the system service provider and/or Anua.

BUYER UNDERSTANDS AND AGREES THAT DUE TO PROCESS VARIABLES AND CONDITIONS BEYOND SUPPLIER'S KNOWLEDGE AND CONTROL, SUPPLIER WILL NOT AND DOES NOT EXPRESSLY OR IMPLIEDLY WARRANT OR GUARANTEE THE PRODUCTS AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NOR THAT IT WILL ACHIEVE PARTICULAR OR INTENDED PROCESS, PRODUCTION OR PRODUCT RESULTS. LIKEWISE, SUPPLIER DOES NOT WARRANT THAT THE PRODUCTS ARE NON-INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS; THE RISK OF INFRINGEMENT FOR USE OR RE-SALE OF THE PRODUCTS IS ON BUYER.

14. LIMITATIONS OF LIABILITY: In no event shall Supplier's liability to Buyer arising out of or relating to the sale of any product or service pursuant to this Agreement, exceed the purchase price paid by Buyer to Supplier for such product or service in the twelve months prior to confirmation of the sum of such liability.

15. TERMINATION: Buyer may not terminate this Agreement except by giving Supplier seventy- five (75) days prior written notice. In the event of termination, Buyer and Supplier shall be relieved of all further obligations hereunder except that a) Supplier shall retain any deposits or pre- payments by Buyer as liquidated damages, b) Buyer shall pay Supplier an additional sum equal to the total of Supplier's costs incurred as of the date of termination including, without limitation, all costs, expenses and liabilities, (including cancellation charges) incurred by Supplier as a result of such termination, plus any amounts withheld by Buyer to settle claims against or to pay indebtedness of Supplier in accordance with terms of this Agreement, and c) the provisions of paragraphs 1, 7, 8, 9, 10, 11, 12, 14, 15, 16, 17, 18, 19 and 20 shall survive any such termination.

16. WAIVERS: No waiver of any provision of this Agreement or any rights or obligations of either party hereunder shall be effective, except pursuant to a written instrument signed by the party or parties expressly waiving compliance. Any such waiver shall be effective only in the specific instance and for the specific purpose stated in such writing. Buyer's issuance of a PO with terms and conditions different than the Supplier terms and conditions, and Supplier's subsequent performance is not a waiver.

17. GOVERNING LAW AND COMPLIANCE: This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law rule. Each party hereby irrevocably submits to the jurisdiction of any state or federal court sitting in New Castle County, Delaware over any action, claim, suit or proceeding initiated by another party and arising out of or relating to this Agreement or the transactions contemplated hereby, and each party hereby irrevocably agrees that all claims in respect of any such action, claim, suit or proceeding shall be heard and determined in any such state or federal court.

18. SEVERABILITY OF PROVISIONS: In the event that any provisions hereof are held invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER SUCH PROVISION AND TO BE ENFORCED AS SUCH. FURTHER, IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT IN THE EVENT ANY REMEDY HEREUNDER IS DETERMINED TO HAVE FAILED ITS ESSENTIAL PURPOSE, ALL LIMITATIONS AND EXCLUSIONS OF DAMAGES SET FORTH HEREIN SHALL REMAIN IN EFFECT.

V.05/2023